

MONTANA LEGISLATIVE HISTORY

Chapter 26 19 91

Bill H _____ S 6 Original bill & history ☒ C

H. Committee on Judiciary

Hearing Date(s) 2/4 _____ C

_____ C

_____ C

_____ C

Date Out _____ C

S. Committee on Judiciary

Hearing Date(s) 1/16 _____ C

1/18 _____ C

_____ C

_____ C

Did this bill originate in an interim committee? _____ Yes _____ No

Committee _____

Report _____

SENATE FINAL STATUS

SB 7

1/11	2ND READING PASSED	50	0
1/12	3RD READING PASSED	49	0
TRANSMITTED TO HOUSE			
1/14	FIRST READING		
1/14	REFERRED TO BUSINESS & ECONOMIC DEVELOPMENT		
1/18	HEARING		
1/18	COMMITTEE REPORT—BILL CONCURRED		
1/19	2ND READING CONCURRED	93	2
1/21	3RD READING CONCURRED	94	3
RETURNED TO SENATE			
1/23	SIGNED BY PRESIDENT		
1/24	SIGNED BY SPEAKER		
1/25	TRANSMITTED TO GOVERNOR		
1/29	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 2		
		EFFECTIVE DATE: 1/29/91	

SB 6 INTRODUCED BY MAZUREK
REVISE UNIFORM STATUTORY RULE AGAINST PERPETUITIES

12/27	INTRODUCED		
12/28	REFERRED TO JUDICIARY		
1/07	FIRST READING		
1/16	HEARING		
1/18	COMMITTEE REPORT—BILL PASSED		
1/21	2ND READING PASSED	46	0
1/22	3RD READING PASSED	48	0
TRANSMITTED TO HOUSE			
1/23	FIRST READING		
1/23	REFERRED TO JUDICIARY		
2/04	HEARING		
2/04	COMMITTEE REPORT—BILL CONCURRED		
2/05	2ND READING CONCURRED	97	2
2/06	3RD READING CONCURRED	99	0
RETURNED TO SENATE			
2/11	SIGNED BY PRESIDENT		
2/11	SIGNED BY SPEAKER		
2/11	TRANSMITTED TO GOVERNOR		
2/15	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 26		
		EFFECTIVE DATE: 10/01/91	

SB 7 INTRODUCED BY MAZUREK
REPLACE UNIFORM FRAUDULENT CONVEYANCES ACT WITH
UNIFORM FRAUDULENT TRANSFER ACT

12/27	INTRODUCED		
12/28	REFERRED TO JUDICIARY		
1/07	FIRST READING		
1/22	HEARING		
2/23	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/25	2ND READING PASSED	48	0
2/26	3RD READING PASSED	49	0
TRANSMITTED TO HOUSE			
3/04	FIRST READING		
3/04	REFERRED TO JUDICIARY		
3/12	HEARING		
3/14	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/16	2ND READING CONCURRED	83	3
3/18	3RD READING CONCURRED	96	0
RETURNED TO SENATE WITH AMENDMENTS			
3/23	2ND READING AMENDMENTS CONCURRED	47	0
3/25	3RD READING AMENDMENTS CONCURRED	47	0

SENATE BILL NO. 6

INTRODUCED BY MAZUREK

IN THE SENATE

DECEMBER 28, 1990

INTRODUCED AND REFERRED TO COMMITTEE
ON JUDICIARY.

JANUARY 7, 1991

FIRST READING.

JANUARY 18, 1991

COMMITTEE RECOMMEND BILL
DO PASS. REPORT ADOPTED.

JANUARY 19, 1991

PRINTING REPORT.

JANUARY 21, 1991

SECOND READING, DO PASS.

JANUARY 22, 1991

ENGROSSING REPORT.

THIRD READING, PASSED.
AYES, 48; NOES, 0.

TRANSMITTED TO HOUSE.

IN THE HOUSE

JANUARY 22, 1991

INTRODUCED AND REFERRED TO COMMITTEE
ON JUDICIARY.

JANUARY 23, 1991

FIRST READING.

FEBRUARY 4, 1991

COMMITTEE RECOMMEND BILL BE
CONCURRED IN. REPORT ADOPTED.

FEBRUARY 5, 1991

SECOND READING, CONCURRED IN.

FEBRUARY 6, 1991

THIRD READING, CONCURRED IN.
AYES, 99; NOES, 0.

RETURNED TO SENATE.

IN THE SENATE

FEBRUARY 6, 1991

RECEIVED FROM HOUSE.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

SENATE BILL NO. 6

INTRODUCED BY MAZUREK

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE UNIFORM STATUTORY RULE AGAINST PERPETUITIES BY PROVIDING A UNIFORM METHOD FOR MEASURING A PERIOD OF TIME CONTAINED IN INSTRUMENTS GOVERNING PROPERTY ARRANGEMENTS; AND AMENDING SECTION 70-1-802, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 70-1-802, MCA, is amended to read:

"70-1-802. Statutory rule against perpetuities. (1) A nonvested property interest is invalid unless:

(a) when the interest is created, it is certain to vest or terminate no later than 21 years after the death of an individual then alive; or

(b) the interest either vests or terminates within 90 years after its creation.

(2) A general power of appointment not presently exercisable because of a condition precedent is invalid unless:

(a) when the power is created, the condition precedent is certain to be satisfied or become impossible to satisfy no later than 21 years after the death of an individual then alive; or

(b) the condition precedent either is satisfied or becomes impossible to satisfy within 90 years after its creation.

(3) A nongeneral power of appointment or a general testamentary power of appointment is invalid unless:

(a) when the power is created, it is certain to be irrevocably exercised or otherwise to terminate no later than 21 years after the death of an individual then alive; or

(b) the power is irrevocably exercised or otherwise terminates within 90 years after its creation.

(4) In determining whether a nonvested property interest or a power of appointment is valid under subsection (1)(a), (2)(a), or (3)(a), the possibility that a child will be born to an individual after the individual's death is disregarded.

(5) If, in measuring a period from the creation of a trust or other property arrangement, a clause in a governing instrument purports to postpone the vesting or termination of any interest or trust until, purports to disallow the vesting or termination of any interest or trust beyond, purports to require all interests or trusts to vest or terminate no later than, or operates in any similar fashion upon the later of:

(a) the expiration of a period of time that exceeds 21

1 years or that exceeds or might exceed 21 years after the
2 death of the survivor of lives in being at the creation of
3 the trust or other property arrangement; or

4 (b) the death of, or the expiration of a period not
5 exceeding 21 years after the death of, the survivor of
6 specified lives in being at the creation of the trust or
7 other property arrangement, then the portion of the clause
8 pertaining to the period of time that exceeds 21 years or
9 that exceeds or might exceed 21 years after the death of the
10 survivor of lives in being at the creation of the trust or
11 other property arrangement must be disregarded, and the
12 clause operates upon the death of, or upon the expiration of
13 the period not exceeding 21 years after the death of, the
14 survivor of the specified lives in being at the creation of
15 the trust or other property arrangement."

-End-

MINUTES

MONTANA SENATE 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Dick Pinsoneault, on January 16, 1991,
at 10:00 a.m.

ROLL CALL

Members Present:

Dick Pinsoneault, Chairman (D)
Bill Yellowtail, Vice Chairman (D)
Robert Brown (R)
Bruce Crippen (R)
Steve Doherty (D)
Lorents Grosfield (R)
Mike Halligan (D)
John Harp (R)
Joseph Mazurek (D)
David Rye (R)
Paul Svrcek (D)
Thomas Towe (D)

Members Excused: none

Staff Present: Valencia Lane (Legislative Council).

Please Note: These are summary minutes. Testimony and discussion
are paraphrased and condensed.

Announcements/Discussion: none

HEARING ON SENATE BILL 31

Presentation and Opening Statement by Sponsor:

Senator Tom Towe, District 46, said the 1987 legislative session passed a bill protecting employees from indiscriminate blood and urine testing, consistent with the Montana constitution. He stated that the employer could not, as a condition of employment, require such testing except in hazardous work, nor could an employer continue such testing.

Senator Towe advised the Committee that there is a problem because that legislation did not set a standard for testing which is corrected by SB 31. He explained that part 2 of the bill specifically states that testing must be performed by laboratories

Pyfer asked the Committee not to give the bill an immediate effective date.

Opponents' Testimony:

There were no opponents of SB 1.

Questions From Committee Members:

Senator Halligan asked about the elimination of bulk transfers. Senator Mazurek replied that they simply wouldn't have to be dealt with, and added that bulk transfer is not often breached in Montana.

Senator Towe asked if there anything to protect purchasers in Article 4. Senator Mazurek replied that it would ultimately be protection for purchasers. Senator Towe asked Staff Attorney, Valencia Lane, to check on this.

Senator Towe asked if leasing were generally accepted. Senator Mazurek replied that California, New York, and Massachusetts have considered leasing and it appears to be generally accepted.

Chairman Pinsoneault advised the Committee that executive action would be held off for time to look into these matters.

Closing by Sponsor:

Senator Mazurek waived closing.

HEARING ON SENATE BILL 6

Presentation and Opening Statement by Sponsor:

Senator Joe Mazurek, District 23, provided the Committee with written testimony on SB 6 (Exhibit #8). He explained that he was uncertain how to interpret the 1990 amendment to the Uniform Statutory Rule against Perpetuities Act, except that the bill was designed to correct a problem arising after the Act was passed in 1989.

Senator Mazurek did state that SB 6 was an attempt to carry out the original intent of the 1989 Act, to make the intentions of trust valid.

Proponents' Testimony:

John Cadby, Montana Bankers Association, stated there are four trust companies in Montana who looked at the bill and believe it is great.

Opponents' Testimony:

There were no opponents of SB 6.

Questions From Committee Members:

Chairman Pinsoneault asked Mr. Cadby if he could get some of the trust officers who reviewed SB 6 to put together a diagram for committee review. Mr. Cadby replied he would be happy to comply.

Closing by Sponsor:

Senator Mazurek waived closing on SB 6.

EXECUTIVE ACTION ON SENATE BILL 53

Motion:

Senator Towe made a motion that the amendments prepared by Valencia Lane, Staff Attorney, be approved.

Discussion:

Valencia Lane explained that Senator Devlin gave his permission to put all of the proposed amendments as one, exactly as requested by the Department of Justice, Larry Akey, and Senator Devlin.

Amendments, Discussion, and Votes:

The motion to amend SB 53 carried unanimously.

Senator Yellowtail stated he was not comfortable with opening the door for playing for a pot.

Senator Brown stated that Senator Mazurek also had questions on the bill, and asked the Committee to wait until Senator Mazurek could be present for discussion.

Senator Grosfield questioned gambling as it relates to the tribes. Senator Brown said the state must enter into negotiations with the tribes to get them to comply.

Senator Towe asked Valencia Lane to study this issue and report to the Committee. Chairman Pinsoneault added that a huge federal law on gambling is being implemented.

Senator Yellowtail commented that Valencia Lane may want to contact Kathleen Fleury, Attorney, Indian Affairs.

16 Jan 91
Exhibit 8

THE 1990 AMENDMENT TO THE UNIFORM STATUTORY RULE AGAINST
PERPETUITIES ACT

In 1990 the Uniform Law Commissioners adopted an amendment, Section 1(e), to resolve a problem with certain clauses, called "later of" clauses, in property instruments, which are drafted to avoid invalidity under the rule against perpetuities. An example of such a clause is: "The maximum time of vesting or terminating any interest under this trust must occur no later than the later of (A) 21 years after the death of the survivor of the of the beneficiaries alive at the creation of this trust or (B) 90 years after the creation of the trust." If the property instrument (trust in this case) meets the prospective common law test of lives in being plus 21 years, there is no problem. If it does not, the "later of" clause may delay vesting in a way that misuses the Uniform Act.

The Uniform Act has a two track rule. It validates the common law rule, so that anything that will vest within the prescribed time is valid. But the Uniform Act also allows interests that do not meet the common law rule to become fully valid if they actually vest within 90 years. By using the "later of" language, the drafter of a property instrument actually causes it to violate the common law rule and forces the question of validity upon the 90 year actual vesting rule. It can be used to convert the 90 year rule into a kind of minimum time for vesting, in the event the drafter does not succeed in meeting the common law rule in a effort to delay vesting of interests for even longer. This is an unintended and unwanted effect. The 90 year rule is meant to forgive bad drafting and its most draconian effect upon valid future interests, but it is not meant to create a target for draftsmen.

The amendment terminates the unwanted effect of "later of" clauses by providing that they are always inoperative to produce a period of time that exceeds 21 years after the death of the survivor of specified lives.

MINUTES

MONTANA SENATE 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Dick Pinsoneault, on January 18, 1991,
at 10:00 a.m.

ROLL CALL

Members Present:

Dick Pinsoneault, Chairman (D)
Bill Yellowtail, Vice Chairman (D)
Robert Brown (R)
Bruce Crippen (R)
Steve Doherty (D)
Lorents Grosfield (R)
Mike Halligan (D)
Joseph Mazurek (D)
David Rye (R)
Paul Svrcek (D)
Thomas Towe (D)

Members Excused: John Harp (R)

Staff Present: Valencia Lane (Legislative Council).

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion: none

HEARING ON SENATE BILL 37

Presentation and Opening Statement by Sponsor:

Senator Mike Halligan, District 29, said SB 37 was the major product of study and discussion at the January 17, 1991 Senate Judiciary hearings. He explained that the bill looks at funding, payment responsibility, and operations. Senator Halligan said the statement of intent is the summary of the philosophy of the subcommittee. He stated that models were built around the best of what other states are doing and from looking at facilities around the state.

Senator Halligan said the "guts" of the bill begin on page 12, establishing initial detention policy and providing options. He told the Committee section 4 on page 14 which creates regions is a key issue. He explained that incentives for reimbursement depend on getting into a region.

Senator Yellowtail made a motion that SB 59 be amended on page 2, line 23, following "youth", by inserting "in the youth's home under home arrest or". The motion carried unanimously.

Recommendation and Vote:

Senator Yellowtail made a motion that SB 59 DO PASS AS AMENDED. The motion carried unanimously.

EXECUTIVE ACTION ON SENATE BILL 56

Motion:

Discussion:

Valencia Lane provided the Committee with the amendment drafted at the request of Candy Wimmer, Board of Crime Control.

Amendments, Discussion, and Votes:

Senator Yellowtail made a motion that SB 56 be amended on page 9, line 18, by striking "be a serious juvenile offender", and inserting "have committed an offense that is transferable to criminal court under 41-5-206". The motion carried unanimously.

Recommendation and Vote:

Senator Yellowtail then made a motion that SB 56 DO PASS AS AMENDED. The motion carried unanimously.

EXECUTIVE ACTION ON SENATE BILL 6

Motion:

Discussion:

Senator Mazurek explained that the provisions addressed in SB 6 were promulgated in 1988, and that a problem was discovered in 1990. He said the bill would adopt the uniform act as amended, protecting people who would otherwise have instruments declared void.

Amendments, Discussion, and Votes:

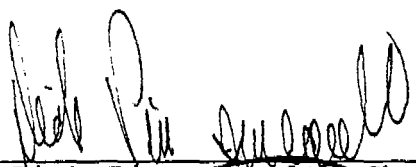
There was none.

Recommendation and Vote:

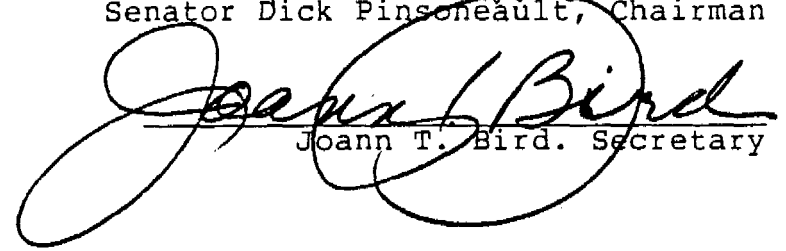
Senator Mazurek made a motion that SB 6 DO PASS. The motion carried unanimously.

ADJOURNMENT

Adjournment At: 11:40 a.m.



Senator Dick Pinsoneault, Chairman



Joann T. Bird, Secretary

DP/jtb

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
January 18, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 6 (first reading copy -- white), respectfully report that Senate Bill No. 6 do pass.

Signed: Richard Pinsonneault
Richard Pinsonneault, Chairman

RB 1/15/91
Amd. Coord.

SP. 1/18 2:30
Sec. of Senate

1-18-91
SB 6



Norwest Capital Management & Trust Co.
Montana
Norwest Bank Building
Post Office Box 597
Helena, Montana 59624
406/447-2050

January 17, 1991

John P. Cadby
Montana Bankers Association
One North Last Chance Gulch
Helena, MT 59601

TO	INITIAL	DATE	FILE
John			
Chad			
Isabel			
Alex			
Dev			
Sharon			

Re: Senate Bill No. 6

Dear Mr. Cadby:

You have asked that I comment as Chairman of the Trust Committee of the Montana Bankers Association concerning Senate Bill No. 6. Senate Bill No. 6 is an amendment to Section 70-1-802 of the Montana Code Annotated. This section of the code is entitled "Uniform Statutory Rule Against Perpetuities" (USRAP). The definition of the Law of Perpetuity is stated in Section 70-1-802 (1) as follows:

A non-vested property interest is invalid unless;
(a) when the interest is created, it is certain to vest or terminate no later than twenty^{one} years after the death of an individual then alive; or (b) the interest either vests or terminates within ninety years after its creation.

Of the above (a) is the old common law rule. If a trust did not fit into this life plus twenty-one years, that portion of the trust was invalid. In 1989, the law was improved by adding (b) which allowed the trustee to keep the trust in effect for up to ninety years to see if the life plus twenty-one years was, in fact, attainable.

I have enclosed a copy of a letter from E. Edwin Eck who was involved in the drafting of this bill wherein he states the purpose of the bill. In his letter he states that the main purpose of this bill is to satisfy the IRS with regard to those irrevocable trusts that are presently grandfathered for generation-skipping transfer tax. Briefly, the generation-skipping transfer tax is a tax on a trust that skips a generation. For example, if you had

John P. Cadby
January 17, 1991
Page Two

a trust that continued for the lifetime of your children and distributed to your grandchildren, you are skipping the generation of your children. If the trust is large enough under the Generation-Skipping Transfer Tax Law, a tax would be imposed upon the death of a child; then the trust could continue for the benefit or distribute to the second generation.

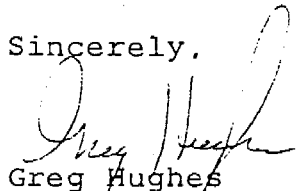
Prior to September 26, 1985, you could skip a generation without incurring a transfer tax. All trusts that were irrevocable prior to September 26, 1985, are grandfathered.

The purpose of this bill, as previously mentioned, is to protect those trusts that are grandfathered for generation-skipping transfer tax.

I realize this is very complicated, as not only does it involve the rule against perpetuities but the generation-skipping transfer tax, both which very seldom come into play, especially here in Montana.

As chairman of the trust committee of the MBA, I do request that the MBA support this bill so Montana is in conformity with the rest of the states that have adopted the uniform code.

Sincerely,



Greg Hughes
Assistant Vice President
and Trust Officer

Enclosure

University of
Montana

School of Law
University of Montana
Missoula, Montana 59812-1071
(406) 243-4311

SB 6
1-18-91

January 10, 1991

Rep. Howard Toole
Montana House of Representatives
State Capitol Complex
Helena, Montana 59620

Re: Uniform International Wills Act
Uniform Statutory Rule Against Perpetuities Act

Dear Howard:

Just a note to thank you for your willingness to sponsor the above two acts.

I confirmed with the Legislative Council that Sen. Joe Mazurek has already made drafting requests for both of these acts. The amendments to the Uniform Statutory Rule Against Perpetuities Act have been assigned L.C. number 145. The Uniform International Wills Act has been assigned L.C. number 530.

The Legislative Council further advises me that your introduction of both of these acts will not count as bill drafting requests by you.

Uniform Statutory Rule Against Perpetuities Act ("USRAP")- amendment.
Montana adopted this Act in 1989. The Act validates a number of contingent interests which would have been invalid under the common law rule.

Subsequent to the adoption of USRAP, the Internal Revenue Service raised an issue concerning its application to the federal generation-skipping transfer tax system. The federal generation skipping transfer tax does not apply to irrevocable trusts created before September 26, 1985. Such trusts are said to be "grandfathered" from the tax. The USRAP amendment is designed to save the "grandfather" status of pre-September 26, 1985 trusts which contain certain "savings clauses." The Treasury has given informal approval to this amendment.

Uniform International Wills Act. The purpose of this act (part of the national Uniform Probate Code, but not part of the Montana Uniform Probate Code) is to provide testators with a way of making wills valid as to form in 42 countries which were represented at a 1973 Convention in Washington, D.C. on the topic.

Representative Howard Toole
January 10, 1991
Page 2

Conclusion. I appreciate your willingness to sponsor these Acts. If you wish additional information from me or testimony at a hearing, please give me a call at 243-6534.

Again, thank you.

Sincerely,

E. EDWIN ECK
Professor
Uniform Law Commissioner

cc:

Sen. Joseph P. Mazurek
P.O. Box 1715
Helena, MT 59624

Dean Robert E. Sullivan
112 Hillcrest Loop
Missoula, MT 59803

Mr. James E. Vidal
P.O. Box 728
Kalispell, MT 59901

Greg
Here is another way
to restate the USRAP Amendment
↓

If a trust termination clause calls for ending the trust at the expiration of (i) a period of years exceeding 21 or (ii) specified lives in being (plus 21 years if the drafter chooses), whichever is later, the first alternative termination date (a period of years) will be disregarded and the clause will operate to terminate the trust only on the expiration of the latter event.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bill Strizich, on February 4, 1991,
at 9:07 a.m.

ROLL CALL

Members Present:

Bill Strizich, Chairman (D)
Vivian Brooke, Vice-Chair (D)
Arlene Becker (D)
William Boharski (R)
Dave Brown (D)
Robert Clark (R)
Paula Darko (D)
Budd Gould (R)
Royal Johnson (R)
Vernon Keller (R)
Thomas Lee (R)
Bruce Measure (D)
Charlotte Messmore (R)
Linda Nelson (D)
Jim Rice (R)
Angela Russell (D)
Jessica Stickney (D)
Howard Toole (D)
Tim Whalen (D)
Diana Wyatt (D)

Staff Present: John MacMaster, Leg. Council Staff Attorney
Jeanne Domme, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

HEARING ON SJR #1 COMMEMORATE 100TH ANNIVERSARY OF NCCUSL

Presentation and Opening Statement by Sponsor:

SEN. MAZUREK, SENATE DISTRICT 23, stated this is a joint resolution that commemorates the 100th anniversary of the National Conference of Commissioners on Uniform State Laws. This resolution is being presented in the legislature of all 50 states to commemorate the 100th anniversary the uniform law

commissioners. It is an organization that was started by the American Bar Association. It represents a commission of 300 lawyers, judges, law professors and some legislators which promotes uniform laws in areas where uniformity is desirable. We currently have 49 uniform laws in place. Our participation is a nominal cost of \$6000 a year. I hope the committee will concur with this resolution.

Proponents' Testimony:none

Opponents' Testimony:none

Questions From Committee Members: none

Closing by Sponsor:none

HEARING ON SB #6

REVISE UNIFORM STATUTORY RULE AGAINST PERPETUITIES

Presentation and Opening Statement by Sponsor:

SENATOR MAZUREK, SENATE DISTRICT 23, stated this is a correction to a uniform act which the legislature adopted in the last session. It is to revise the uniform statutory rule against perpetuities. The adoption of the uniform rule against perpetuities was good for two groups of people. One were lawyers and drafters of documents such as deeds and trusts. The other was for people who wanted to pass property on from generation to generation. The problem with the rule against perpetuities essentially said when a lawyer drafted an instrument to call for the vesting of property in another generation and if they made a mistake in drafting that violated the rule against perpetuities, it was void. This amendment is designed to correct that. He gave two letters of support for the record. EXHIBIT 1 & 2

Proponents' Testimony:none

Opponents' Testimony:none

Questions From Committee Members:none

Closing by Sponsor:none

HEARING ON HB #310

REVISE CRIME OF ESCAPE

Presentation and Opening Statement by Sponsor:

REP. HOFFMAN, HOUSE DISTRICT 74, stated this bill was requested by the Montana County Attorney's Association to address the loopholes in the statutory crime of escape. The first amendments on page 2, line 18 through 20 are proposed to correct the problem

HEARING ON HB #416

REMOVE BURDEN OF DISPROVING UNLAWFUL POSSESSION OF STOLEN PROP.

Presentation and Opening Statement by Sponsor:

REP. BROWN, HOUSE DISTRICT 72, stated this bill came from a Supreme Court decision of State vs. Kramp and that case the court held up the provision of 45-6-304 that required the person in possession of stolen property to prove that he came into the possession lawfully was unconstitutional. The Supreme Court said the law states if you were in possession of stolen property it was up to you to prove it was legal, and they said that is not the way the law is suppose to work.

"The Department Of Justice came to me last week when they saw this bill was in and they have another bill, HB #555, which says we will appeal this whole statute. They have some additional language they want to add. I would ask the committee to hold this bill out of action until we can see HB #555 here and then we can decide what direction we would prefer to go."

Proponents' Testimony:

Beth Baker, Department of Justice, stated she wanted to confirm what Rep. Brown stated. We do have a bill that deals with the statute as well as adding new language. I would reserve my comments until HB #555 comes to this committee.

Opponents' Testimony:none

Questions From Committee Members:none

Closing by Sponsor:none

EXECUTIVE ACTION ON SJR #1

Motion/Vote: REP. BROOKE MOVED SJR #1 BE CONCURRED IN. Motion carried unanimously.

EXECUTIVE ACTION ON SB #6

Motion/Vote: REP. BROWN MOVED SB #6 BE CONCURRED IN. Motion carried unanimously.

11-30
2-4-91
JDB

HOUSE STANDING COMMITTEE REPORT

February 4, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that
Senate Bill 6 (third reading copy -- blue) be concurred in.

Signed: [Signature]
Bill Strizich, Chairman

University of Montana

EXHIBIT 1
DATE 2-4-91
SB 6

School of Law
University of Montana
Missoula, Montana 59812-1071
(406) 243-4311

January 10, 1991

Rep. Howard Toole
Montana House of Representatives
State Capitol Complex
Helena, Montana 59620

Re: Uniform International Wills Act
Uniform Statutory Rule Against Perpetuities Act

Dear Howard:

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Ex. 1
2-4-91
SB 6

Representative Howard Toole
January 10, 1991
Page 2

Conclusion. I appreciate your willingness to sponsor these Acts. . If you wish additional information from me or testimony at a hearing, please give me a call at 243-6534.

Again, thank you.

Sincerely,

E. EDWIN ECK
Professor
Uniform Law Commissioner

cc:

✓ Sen. Joseph P. Mazurek
P.O. Box 1715
Helena, MT 59624

Dean Robert E. Sullivan
112 Hillcrest Loop
Missoula, MT 59803

Mr. James E. Vidal
P.O. Box 728
Kalispell, MT 59901

EXHIBIT 2
DATE 2-4-91



SB 6

Norwest Capital Management & Trust Co.
Montana
Norwest Bank Building
Post Office Box 597
Helena, Montana 59624
406/447-2050

January 17, 1991

TO	INITIAL	DATE	FILE
.....John			For Your Information
.....Cheri			Mail Copy To
.....Tempi			Handle It
.....Alex			Return Original To
.....Ray			File
.....Sharon			

John P. Cadby
Montana Bankers Association
One North Last Chance Gulch
Helena, MT 59601

Re: Senate Bill No. 6

Dear Mr. Cadby:

You have asked that I comment as Chairman of the Trust Committee of the Montana Bankers Association concerning Senate Bill No. 6. Senate Bill No. 6 is an amendment to Section 70-1-802 of the Montana Code Annotated. This section of the code is entitled "Uniform Statutory Rule Against Perpetuities" (USRAP). The definition of the Law of Perpetuity is stated in Section 70-1-802 (1) as follows:

A non-vested property interest is invalid unless;
(a) when the interest is created, it is certain to vest or terminate no later than twenty^{one} years after the death of an individual then alive; or (b) the interest either vests or terminates within ninety years after its creation.

Of the above (a) is the old common law rule. If a trust did not fit into this life plus twenty-one years, that portion of the trust was invalid. In 1989, the law was improved by adding (b) which allowed the trustee to keep the trust in effect for up to ninety years to see if the life plus twenty-one years was, in fact, attainable.

I have enclosed a copy of a letter from E. Edwin Eck who was involved in the drafting of this bill wherein he states the purpose of the bill. In his letter he states that the main purpose of this bill is to satisfy the IRS with regard to those irrevocable trusts that are presently grandfathered for generation-skipping transfer tax. Briefly, the generation-skipping transfer tax is a tax on a trust that skips a generation. For example, if you had

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John P. Cadby
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a trust that continued for the lifetime of your children and distributed to your grandchildren, you are skipping the generation of your children. If the trust is large enough under the Generation-Skipping Transfer Tax Law, a tax would be imposed upon the death of a child; then the trust could continue for the benefit or distribute to the second generation.

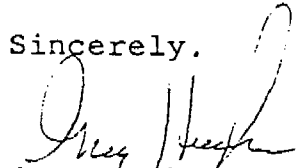
Prior to September 26, 1985, you could skip a generation without incurring a transfer tax. All trusts that were irrevocable prior to September 26, 1985, are grandfathered.

The purpose of this bill, as previously mentioned, is to protect those trusts that are grandfathered for generation-skipping transfer tax.

I realize this is very complicated, as not only does it involve the rule against perpetuities but the generation-skipping transfer tax, both which very seldom come into play, especially here in Montana.

As chairman of the trust committee of the MBA, I do request that the MBA support this bill so Montana is in conformity with the rest of the states that have adopted the uniform code.

Sincerely.



Greg Hughes
Assistant Vice President
and Trust Officer

Enclosure

University of
Montana

School of Law
University of Montana
Missoula, Montana 59812-1071
(406) 243-4311

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January 10, 1991

Rep. Howard Toole
Montana House of Representatives
State Capitol Complex
Helena, Montana 59620

Re: Uniform International Wills Act
Uniform Statutory Rule Against Perpetuities Act

Dear Howard:

Just a note to thank you for your willingness to sponsor the above two acts.

I confirmed with the Legislative Council that Sen. Joe Mazurek has already made drafting requests for both of these acts. The amendments to the Uniform Statutory Rule Against Perpetuities Act have been assigned L.C. number 145. The Uniform International Wills Act has been assigned L.C. number 530.

The Legislative Council further advises me that your introduction of both of these acts will not count as bill drafting requests by you.

Uniform Statutory Rule Against Perpetuities Act ("USRAP")- amendment.
Montana adopted this Act in 1989. The Act validates a number of contingent interests which would have been invalid under the common law rule.

Subsequent to the adoption of USRAP, the Internal Revenue Service raised an issue concerning its application to the federal generation-skipping transfer tax system. The federal generation skipping transfer tax does not apply to irrevocable trusts created before September 26, 1985. Such trusts are said to be "grandfathered" from the tax. The USRAP amendment is designed to save the "grandfather" status of pre-September 26, 1985 trusts which contain certain "savings clauses." The Treasury has given informal approval to this amendment.

Uniform International Wills Act. The purpose of this act (part of the national Uniform Probate Code, but not part of the Montana Uniform Probate Code) is to provide testators with a way of making wills valid as to form in 42 countries which were represented at a 1973 Convention in Washington, D.C. on the topic.

Representative Howard Toole
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Conclusion. I appreciate your willingness to sponsor these Acts. If you wish additional information from me or testimony at a hearing, please give me a call at 243-6534.

Again, thank you.

Sincerely,

E. EDWIN ECK
Professor
Uniform Law Commissioner

cc:

Sen. Joseph P. Mazurek
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Dean Robert E. Sullivan
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Missoula, MT 59803

Mr. James E. Vidal
P.O. Box 728
Kalispell, MT 59901

*Greg: Here is another way
to restate the USRAP Amendment*

If a trust termination clause calls for ending the trust at the expiration of (i) a period of years exceeding 21 or (ii) specified lives in being (plus 21 years if the drafter chooses), whichever is later, the first alternative termination date (a period of years) will be disregarded and the clause will operate to terminate the trust only on the expiration of the latter event.